



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

the trial court erred in allowing defendant company's plea of non assumpsit to be withdrawn on the motion of an administrator not a party.

Error to Circuit Court, Tazewell County.

Action by Dudley, trading, etc., against the Carter Red Ash Collieries Company. To review judgment of dismissal, plaintiff brings error. Judgment reversed and annulled, and cause remanded with direction.

R. O. Crockett, of Tazewell, and *Jas. S. Kahle*, of Bluefield, W. Va., for plaintiff in error.

CLARK et al. v. REYNOLDS.

Sept. 17, 1919.

[100 S. E. 468.]

1. **Trial (§ 105 (2)*)—Hearsay Testimony, Unobjected to, Good.**
—Hearsay testimony, unobjected to, is good.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 632.]

2. **Easements (§ 5*)—Evidence of Right of Way by Prescription.**
—Complainants, in suit to enjoin and restrain defendant from interfering with the use of a private road or right of way through his premises, under the facts held entitled to a right of way by prescription.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 309; 11 Va.-W. Va. Enc. Dig. 370.]

3. **Easements (§ 5*)—Prescriptive Right of Way Not Affected by Other Access to Land.**—A prescriptive right in a right of way, implying an original grant, is in no way dependent upon or affected by the fact that there may be other ways of reaching the dominant land.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 370.]

4. **Estoppel (§ 78 (3)*)—Violated Contract No Defense in Suit to Enjoin Interference with Right of Way.**—Defendant, in suit to enjoin and restrain interference with complainants' use of a private road or right of way through his premises, cannot defend his position by the terms of a contract regarding the right of way which he himself had disregarded.

5. **Easements (§ 51*)—Use of Right of Way for Other Land Than Agreed.**—A landowner has a right, as owner of an undivided interest in two tracts, served by a right of way over the premises of another, to use of the way in going to and from both of his tracts; but he cannot go out of the limits of the way, nor use it as an easement for the benefit of any other place than that for which it was originally established.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 372.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Easements (§ 31*)—Abuse of Right of Way Does Not Extinguish It.—That the owners of right of way over private premises have abused the easement, by driving out of the limits of the way and trespassing on the servient land, does not extinguish the easement the injured owner of the servient land having an adequate remedy by action for damages or suit for injunction.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 373.]

Appeal from Circuit Court, Washington County.

Suit by Mrs. Martha Clark and another against Johnson Reynolds. From a decree for defendants, complainants appeal. Decree reversed, and decree entered for complainants.

L. P. Summers, of Abingdon, for appellants.

Ino. J. Stuart, of Abingdon, for appellee.

HAYNES et al. v. PETERSON.

Sept. 17, 1919.

[100 S. E. 471.]

1. Deeds (§ 196 (2)*)—Burden on Plaintiff to Prove Fraud as Basis for Cancellation.—In suits for cancellation of deeds on the ground of fraud, the burden of proof rests on plaintiff to prove the allegations on which he seeks relief by satisfactory proof.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 502.]

2. Convicts (§§ 3, 4*)—Power to Contract or Convey Not Prohibited by Statute.—There is no statute in Virginia depriving a convict of the power to make contracts or conveyances of his real estate; corruption of blood and forfeiture of estate on conviction of felony as at common law having been abolished by Code 1904, § 3883.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 357; 2 Va.-W. Va. Enc. Dig. 328.]

3. Convicts (§ 3*)—Right to Take and Dispose of Property Not Affected by Attainder of Felony.—In Virginia, the right of a person to take, hold, and dispose of his property, real and personal, is not affected by his attainder of felony.

4. Convicts (§ 3*)—Appointment of Committee, Where Convict Has Disposed of Estate, Unnecessary.—The procedure of Code 1904, §§ 4110-4173c, authorizing the appointment of a committee for the estate of a convict to administer his estate and to sue and be sued in respect to it, does not apply where the convict has exercised the right to dedicate his property to the payment of debts and support of his family before the appointment of a committee.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1072.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.